THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 18735 of 2000

DATED:18-08-2005

Between:

K.B.Naik, S/o. Naik,
C/o. V. Malik, H.No. 1-1-5/C, Jawaharnagar,
Musheerabad, Hyderabad.

..... PETITIONER

AND

1 The Presiding Officer,
Additional Industrial Tribunal-cum- Additional Labour Court,
Hyderabad.
2 The Depot Manager,
APSRTC., Uppal Depot,
Hyderabad.

.....RESPONDENT(S)

THE HONOURABLE SRI JUSTICE C.V.RAMULU

W.P.NO.18735 OF 2000

ORDER:

This writ petition is filed by the workman being aggrieved by the Award made in I.D.No.133 of 1998 dated 16-2-2000 on the file of the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad, wherein the petition filed by the petitioner under Section 2A(2) of the Industrial Disputes Act (for short 'the Act') before the first respondent was rejected in toto.

It is the case of the workman that he was appointed as Conductor in the service of A.P.S.R.T.C. in the year 1983 and he has been discharging his duties to the satisfaction of one and all. While so, when he was conducting bus on 5-10-1997, a check was exercised by the officials of the Corporation and found certain cash and ticket irregularities . On the basis of the report submitted by the checking officials, a charge sheet was issued enumerating the following charges.

> 1."For having not completed the ticket issues in one (1) fare stage i.e. you have not followed the rule of 'Issue and start',

constitutes misconduct in terms of conduct Regulations of 28(ix) (a) and (xxxi) of APSRTC, Employees (conduct) Regulations, 1963".

2. "For your failure to collect the requisite fare and issue the tickets to two individual passengers who happened to travel from Ghatkesar and bound for Medepally ex-stage Nos. 13 to 8 constitutes misconduct in terms of (Conduct) Regulations of 28 (iv) (a) & (xxxii), of APSRTC Employees (Conduct) Regulations, 1963".

3. "For having issued the unconcerned ticket No.001/987387 of Rs.14-00 denomination, (Holiday Ticket) which is not pertaining to the way bill to a lady passenger who have boarded the bus at Ghatkesar and bound for Secunderabad ex-stage Nos. 13 to 1 after collecting the requisite fare of Rs.7-00 from her, constitutes misconduct and violating the provisions of Regulations of 28 (vi) (a) and (xxxii) (Conduct) Regulations of 1963".

The workman though submitted a detailed explanation for the same, the management has ordered for detailed enquiry into the matter. The enquiry officer conducted a farce of enquiry and submitted a report holding that the workman is guilty of charges without there being any acceptable evidence to that effect. The disciplinary authority without properly appreciating the evidence on record, simply accepted the findings of the enquiry officer and passed the order of removal dated 10-4-1998. Aggrieved by the same, the workman filed appeal before the competent authority and the same was also dismissed. Hence, having no other option, the workman raised the dispute under Section 2A(2) of the Act and filed a claim petition which was taken up on file as I.D.No.133 of 1998 by the Additional Industrial Tribunal-cum-Additional Labour Court, at Hyderabad. The Labour Court also did not appreciate the facts and circumstances of the case and just concurred with the findings of the disciplinary authority and dismissed the claim petition filed by the workman. Therefore, this writ petition.

Though no counter is filed, the learned counsel for the respondent strenuously contended that the Labour Court after considering each and every aspect of the evidence placed before it, has come to the conclusion that the charges

are grave in nature and no lenience can be shown; apart from the fact that the workman is bereft of good conduct. In fact, he was removed twice earlier but reinstated into service in view of the orders passed by the appellate authority. The award passed by the Labour Court is just and proper and does not require interference of this court.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and also perused the award passed by the Labour Court and other material made available on record.

At the outset, I am of the opinion that the Labour Court has not committed any error in coming to the conclusion that the charges framed against the workman are proved in full. However, the Labour Court was not right in holding that the workman is not entitled for any relief in the facts and circumstances of the case. Under the Charge Nos. 1 and 2, the workman did not follow the rule of 'issue and start' and also failed to collect the requisite fare and issue tickets to two individual passengers. Even if the said charges are proved, they are not serious enough to impose a punishment of removal from service. In so far as the third charge is concerned, the Labour Court held that the passenger in question have categorically stated that the workman collected the requisite fare of Rs.7-50ps and issued holiday ticket, which is not connected with the tray numbers issued to him. Therefore, the Labour Court held that all the charges including the third charge also were proved and no lenience can be shown. Whereas, in this regard, the workman in his spot explanation stated that the concerned passenger was threatened by the TTIs to impose Rs.500/- fine and obtained statement forcibly by the checking officials to the effect that the Holiday ticket was issued by him, but he has not issued such ticket. The TTIs intentionally and unnecessarily blamed him and he has not collected any amount from the lady passenger. But, the workman however, during the domestic enquiry stated that he has issued regular tickets to passengers duly collecting requisite fare from them. They might have lost the tickets and stated that he has not issued the tickets. May be it is possible the passengers out of apprehension stated that the ticket was issued by workman which is unconnected with the tray and way bill. But it was not in dispute that it was not a holiday ticket and it was not valid for the day of the travel. Therefore, some suspicion as to the statement of lady passenger supports the case of the workman that he had not issued ticket and the unconnected ticket was held by the lady passenger as a holiday ticket. Therefore, she has not taken the ticket and only

when she was threatened with imposing of fine of Rs.500/-, she gave such a statement. But this statement was not considered by the Labour Court and the Labour Court has taken a view that in view of the statement made by the passengers, it must be deemed that the charge has been proved. May be two views are possible, one view was expressed by the Labour Court, which cannot be said to be either arbitrary or illegal. However, in the overall circumstances of the case, I am of the opinion that the removal of the workman from the service is disproportionate to that of the misconduct and this aspect was not examined by the Labour Court saying that the chargers are very serious in nature and they have been proved and the past conduct also was not free from blame. Assuming that the past conduct of the workman was little blemish, but for the present misconduct, proved the punishment of removal from service cannot be said to be proportionate. Therefore, I am of the opinion that the Labour Court has erred in not properly exercising its powers vested under Section 11 (A) of the Act. With these circumstances, the award passed by the Labour Court is set-aside.

In the result, the writ petition is allowed directing the respondents to reinstate the workman into service in the minimum of the scale attached to the post of Conductor and the service rendered by the workman in the Corporation shall be taken into consideration only for the purpose of retiral benefits. However, the same shall not be taken into consideration for the purpose of notional benefits like increments, attendant benefits and seniority.

The respondents are further directed to appoint the petitioner within a period of one month from the date of receipt of a copy of this order.

The writ petition is accordingly allowed. No order as to costs.

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C.V.RAMULU,J

18-08-2005

Stp